

State of New Hampshire Banking Department

In re the Matter of:) Case No.: 07-078
)
State of New Hampshire Banking) Consent Order
)
Department,)
)
Petitioner,) *Applies to Respondent Kirk Smith
) only
and)
)
Southstar Funding LLC, Southstar)
)
Partners LLC, Peter R. Norden, Martin)
)
J. Levine, Timbuktu Inc., Kirk Smith,
and Toni Ward,
Respondents

CONSENT AGREEMENT

I. For purposes of settling the above-referenced matter, among other things, the New Hampshire Banking Department (hereinafter referred to as "the Department") and Respondent Kirk Smith (hereinafter referred to as "Respondent Smith"), do hereby enter this Agreement and stipulate to the following:

1. Respondent Southstar was licensed to conduct mortgage brokering in New Hampshire by the Department at the time this action was initiated.
2. During the times relevant to this cause Respondent Smith was a partial owner and the President of Respondent Southstar.
3. The Department alleges Respondents committed various violations of Chapter 397-A and issued an Order to Show Cause why Respondent Southstar's license should not be revoked and why all Respondents should not be ordered to pay fines.

1 4. Respondents were properly served with the Order and a Notice of
2 Hearing in this case.

3 5. Respondent Smith no longer has the ability to control Respondent
4 Southstar as Respondent Southstar is now under the control of a
5 Trustee in Bankruptcy.

6 6. Respondent Smith does not admit that he committed any violation
7 of New Hampshire Banking Laws or Regulations but wishes to avoid
8 further formal process.

9 II. For purposes of amicably resolving and closing the above-referenced
10 matters Respondent Smith agrees to the following terms and conditions and the
11 Department accepts the same:

- 12 1. Respondent Smith agrees that he has voluntarily entered into this
13 Agreement without reliance upon any discussions between the
14 Department and Respondent Smith, without promise of a benefit of any
15 kind (other than concessions contained in this Agreement), and
16 without threats, force, intimidation, or coercion of any kind.
17 Respondent Smith further acknowledges his understanding of the
18 nature of the offenses stated above, including the penalties
19 provided by law.
- 20 2. Respondent Smith agrees to waive any and all rights to a hearing and
21 appeal thereof.
- 22 3. Respondent Smith agrees that he will not deny the factual basis for
23 this Agreement to which he has stipulated above and will not give
24 conflicting statements about such facts or his involvement in the
25 stipulated facts.
- 26 4. Respondent Smith agrees that all terms of this Agreement are
27 contractual and none is a mere recital.
- 28 5. Respondent Smith agrees that he is liable for an administrative
29 penalty of \$5,000.00.
- 30 6. The Department agrees to waive the penalty conditioned on Respondent
31 Smith's compliance with his agreements herein.
- 32 7. Respondent Smith does not object to the possible removal of Toni
33 Ward from this action.

1 8. Respondent Smith shall not be involved in any New Hampshire mortgage
2 business for a period of three years from the signing of this
3 agreement.

4 This Agreement represents the complete and final resolution of, and discharge
5 of any basis for any civil or administrative proceeding by the Department
6 against the Respondents for violations arising as a result of or in
7 connection with any actions or omissions by the Respondents through the date
8 of this Order as it applies to the above captioned cause; provided, however,
9 this release does not apply to facts not known by the Department or not
10 otherwise provided by the Respondents to the Department as of the date of
11 this Order nor to actions for Restitution under RSA 383:10-d. The Department
12 expressly reserves its right to pursue any administrative or civil action or
13 remedy available to it should the Respondents breach this Agreement or in the
14 future violate the Act or rules and orders promulgated thereunder.

15 **WHEREFORE**, based on the foregoing, we have set our hands to this Agreement,
16 with it taking effect upon the signature of Peter C. Hildreth, Bank
17 Commissioner.

18 Recommended this 15th day of June, 2007 by

19 _____
20 /S/
21 James Shepard, Staff Attorney, Banking Department

22 Executed this 24th day of May, 2007.

23 _____
24 /S/
25 Kirk Smith

26 **SO ORDERED,**

27 Entered this 5th day of July, 2007.

28 _____
29 /S/
30 Peter C. Hildreth,
31 Bank Commissioner